

## CPO update following Secretary of State for Transport –v- Curzon Park Limited and Others

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The recent decision of the Supreme Court in *Secretary of State for Transport .v. Curzon Park Limited and Others* brings welcome clarity on the issue of whether, in determining an application for a certificate of appropriate development (“CAAD”), the decision maker may take into account CAAD applications or decisions which relate to the development of other land.

### Introduction

When land is compulsorily purchased, the landowner is entitled to compensation under the Land Compensation Act 1961 (“the Act”). The measure of compensation is the open market value of the land by a willing seller. Landowners are also entitled to compensation for the increase in the value of the land resulting from actual or prospective planning permission for its development. Account may be taken of planning permission in force, the prospect of it being granted and the appropriate alternative development of the land. Development will be considered to be appropriate alternative development if, at the relevant valuation date, planning permission could reasonably have been expected to be granted on an application decided on or after that date. If this is the case, the landowner may apply to the local planning authority for a CAAD.

### Factual background

The case concerned the valuation of four neighbouring sites which were compulsorily acquired by the Secretary of State for Transport in order to construct a railway terminus in Birmingham for Phase 1 of HS2.



The Respondents were the four previous landowners who had been granted CAADs by Birmingham City Council (“the Council”) in respect of each of their sites. The Council had considered each application in isolation, rejecting the Secretary of State’s contention that the cumulative impacts of all the applications for CAADs should be considered.

The Secretary of State appealed to the Upper Tribunal which held that subject to certain boundaries, it was for the decision maker to give other CAAD applications or decisions relating to other land such evidential weight as they thought appropriate. It rejected the Secretary of State’s arguments that CAAD applications for other sites should be treated as notional applications for planning permission and that each of the respondents was liable to be over-compensated unless the cumulative effect of development was taken into account.

The Secretary of State then appealed to the Court of Appeal which went further than the Upper Tribunal and held that the decision maker was not entitled to take into account any other CAAD applications or decisions relating to the development of other land. The Secretary of State then appealed to the Supreme Court.

## Judgment

The Supreme Court disagreed with the Court of Appeal that CAAD applications or decisions on different sites must be entirely disregarded, restoring the order made by the Upper Tribunal that it was a matter for the decision maker to give other CAAD applications or decisions relating to other land such evidential weight as they thought appropriate. It said that the level of compensation depended on circumstances known to the market at the relevant valuation date

Given that the government is already seeking to reform the current system for compensation for the compulsory acquisition of land as part of the Levelling Up and Regeneration Bill landowners may be concerned that the judgment will result in a reduction of compensation. It remains to be seen whether the Judgment will have an impact on legislative change in this area.

Read our article on the [potential effect of the Levelling Up and Regeneration Bill on the area of compulsory purchase](#) for more information.



[Justine Soutter](#)

Senior Associate